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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,171	07/18/2007	Tatiana Pavlovna Kljushnik	TSET3.001APC	7746
20995	7590	03/12/2008	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				KADAMBI, GEETA
ART UNIT		PAPER NUMBER		
4131				
			NOTIFICATION DATE	DELIVERY MODE
			03/12/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/594,171	KLJUSHNIK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	GEETA KADAMBI	4131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3 and 5-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 3 and 5-10 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ .   | 6) <input type="checkbox"/> Other: ____ .                         |

## DETAILED ACTION

**Claims 3, 5-10 are pending.**

### ***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1and 2, are drawn to a composition perfluorocompounds emulsion and cosmetic and /or dermatological preparation.

Group II, claim(s) 3 is drawn to the method of the abolition of distortions of neurogenous and endocrine regulation of a system of a skin capillary blood flow.

2. The inventions listed as Groups I, and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of group I is perfluorocompounds Dandliker et. al., (U.S. Patent No. 5434191) discloses perfluorocarbon emulsions as shown in column 6 line 47 column 7 line 7. Therefore the feature linking the claims does not constitute a special technical feature as defined by PCT rule 13.2 as it does not define a contribution over the art.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. The examiner has required restriction between product and process claims.

Where applicant elects claims directed to the product, and the product claims are

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subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

During a telephone conversation with Dr. Marina Gordey the attorney a provisional election was made without traverse to prosecute the invention of 2 drawn to the method of the abolition of distortions of neurogenous and endocrine regulation of a system of a skin capillary blood flow. Affirmation of this election must be made by

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applicant in replying to this Office action. Claims 1 and 2 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. The applicant has submitted amended claims.

### ***Specification***

1. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are:
2. Page 1 fourth paragraph "skins cells are deviate" not clear what it means
3. Page 2 the paragraph 1the products are trade marks- e.g.; Oxygent.
4. "Collagen" is written in page 4 paragraph 4 as "collagene".
5. "Hermabene" is transliterated wrong in page 9 example 1 and it should read as "Germaben".

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 3, 5, 6, 7, 8, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kayakiri et al. (US Patent 6348474) in view of Brunetta et al. (US Patent 5562911).**

Applicant claims a method of treating abnormal nervous and/or endocrine regulation of blood flow by applying a perfluorocompounds as an emulsion to a cutaneous surface.

Kayakiri et al. teaches the use of sulfonamides (column 1, lines 20-54) and perfluoro compounds (column 10, line 30) for the treatment of endocrine diseases e.g.; diabetic dermopathy, diabetic neuropathy, distal angiopathy, cardiovascular diseases along with other diseases and vasodilating activity. Kayakiri et al. describes one possibility of a “halo(lower alkyl” substituent of the acyl moiety ( col. 9, line 30 to col. 10, line 31) and perfluorobutyl as one of the components. However Kayakiri et al. does not teach a perfluorocompounds used as dermatological formulations. Brunetta et al. teaches that perfluoropolyethers can be used as dermatological preparations (column 1, lines 21-25) and teaches a composition containing the perfluorocompounds in an example(43) with antioxidants and other ingredients (column 12, lines 36-50).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to follow the teachings of the cited references to use perfluorocompounds along with antioxidants or any other compounds for treatment of nervous and/or endocrine induced skin (cutaneous) perturbations. Kayakiri et al. teaches (claim 3, 6,7,8,9,10 ) the use of perfluorocompounds in compositions to treat nervous and/or endocrine induced cutaneous disorders and increase the blood flow, and Brunetta et al. teaches that perfluorocompounds can be used as emulsions in cosmetic applications (claims 3 and 5). One ordinary skill in the art could combine the two compositions and make useful cosmetic application that would enhance regional blood flow and healing.

One would have been motivated to make this combination in order to treat skin lesions with perfluorocompounds in cosmetics as emulsions. Given the state of the art as evidenced by the teachings of the cited references, and absent any evidence to the contrary, there would have been a reasonable expectation of success in combining the teachings of the cited reference to use perfluorocompounds as emulsions for making the cosmetic compositions for cutaneous use.

The claims recite open language where the perfluorocarbon is required and is combined with anything else.

## CONCLUSIONS

**No claims are allowed.**

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEETA KADAMBI whose telephone number is (571) 270-5234. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley can be reached at (571) 272- 0898. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Geeta Kadambi  
Examiner  
Art Unit 4131

/Shanon A. Foley/

Supervisory Patent Examiner, Art Unit 1645